

Oregon Water Resources Department
Water Right Services Division

Water Right Application S-88363 in the) **Final Order Incorporating Settlement**
name of RUDOLF FEIMER AND) **Agreement**
CAROLYN A. FEIMER)

Final Order Incorporating Settlement Agreement

Hearing and Appeal Rights

The applicant, by the terms of the Settlement Agreement, waives the right to reconsideration and appeal of this Final Order and the settlement agreement.

ORS 536.075 allows any party affected by a final order in other than contested case to appeal the order in Marion County Circuit or the circuit court of the county in which all or part of the property affected by the order is situated. This is a final order in other than contested case and is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to Oregon Administrative Rule (OAR) 137-004-0080 you may also petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Findings of Fact

Findings of fact #1 through #10 in the Proposed Final Order issued on April 24, 2018, are incorporated into this Final Order.

Finding #11 is replaced with the following:

11. The interagency review team (IRT) was notified that an application has been received in an area that may affect the habitat of sensitive, threatened, or endangered fish species. OAR 690-033-0330(1)(b)
 - a. The Oregon Department of Fish and Wildlife expressed concerns about the application's impact on sensitive and threatened fish species and recommended approval with conditions to reduce impacts to instream values from the proposed use. The recommended conditions address screening, prohibition of obstructions in the stream channel, water quality protection, possible riparian area impacts and installation of a totalizing flow meter and a restrictor valve.
 - b. The Oregon Department of Environmental Quality expressed concerns regarding impacts to water quality and recommended denial but indicated that if a permit is issued a meter and water use reporting should be required.

Findings #12 and #13 and #15 are incorporated into this Final Order.

Finding #14 is replaced with the following:

14. If the Department determines that the public interest presumption is not established, the Department shall determine whether the proposed use will impair or be detrimental to the public interest considering the factors listed in ORS 537.170(8).

The Department has considered the following factors:

The maximum economic development of the waters involved: The applicant has demonstrated that denial of this application would result in loss of reasonable expectation for use of the property. The applicant has told the Department that their property on the Chetco River, which this water right would serve, has been for sale and that the sale of the property has fallen through because the property did not have a legal water source. A home has been on the property since 1986 and has used water from the Chetco River and a small nearby tributary continuously since that time.

The control of the waters of this state for all beneficial purposes, included drainage, sanitation and flood control: Human consumption includes uses of water for sanitation (OAR 690-300-0010(24)). Because the applicant has no other reasonable source of water to provide sanitation to their home, human consumption use from the Chetco River and a nearby tributary, is necessary to provide the beneficial use of sanitation to the applicant.

The amount of water available for appropriation for beneficial use: Water is not available from the Chetco River for the proposed use during the full period requested. The requested use is 0.005 cubic foot per second (CFS) with a daily limit of 500 gallons per day. 0.005 CFS equates to approximately 2.24 gallons per minute. The place of use is beyond the service boundary of any domestic water provider. A well was previously drilled on or near the property for a potential domestic supply but the well yielded no water (dry hole). The Department visited the site and determined that drilling of additional wells for a water supply was unlikely to generate a water supply.

The prevention of wasteful, uneconomic, impracticable or unreasonable use of the water involved: The use will be conditions to require reasonable use of the water, without waste, and will require installation of a meter and reporting. The applicant has asked that their daily use rate be limited to no more than 500 gallons per day.

All vested and inchoate rights to the water of the state or to the use of waters of this state, and the means necessary to protect such rights: Issuance of this right may increase the likelihood that water may not be available for all water rights. However, those rights are protected by their respective relative priority dates, the prior appropriation doctrine and established regulatory procedures.

The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534: ORS 536.310(12) provides that "when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses." Because the proposed use is "human consumption" there is a preference, in statute, for this use over all other uses.

After reviewing the factors listed above, the Department has determined that the proposed use will not impair or be detrimental to the public interest and approves the application with the conditions and limitation included in the attached permit.

The following findings are additions to the findings of the Proposed Final Order:

16. On June 4, 2018, a timely protest was filed by the applicant.
17. A Settlement Agreement was signed by all parties as of July 17, 2018. The terms of the Settlement Agreement are incorporated into this Final Order and a copy of the Settlement Agreement is attached.
18. The applicant and the Department have agreed to the permit conditions set forth in the draft permit.

Conclusions of Law

The Conclusions of Law in the Proposed Final Order which states that the proposed use will impair or be detrimental to the public interest is substituted in its entirety with the following:

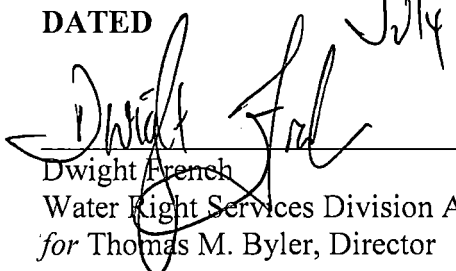
The use, as limited and conditioned in the attached permit, will not impair or be detrimental to the public interest.

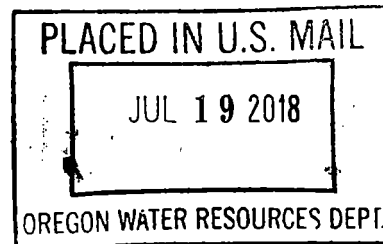
Order

Application S-88363 is therefore approved and Permit S-55142 is issued as limited by the conditions set forth therein.

DATED

July 18, 2018


Dwight French
Water Right Services Division Administrator, for
for Thomas M. Byler, Director



**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

IN THE MATTER OF WATER RIGHT APPLICATION) SETTLEMENT AGREEMENT
S-88363, IN THE NAME OF RUDOLF AND)
CAROLYN A. FEIMER)
 Applicant, Protestant)

The Oregon Water Resources Department (“Department”) and Rudolf and Carolyn A. Feimer (collectively “the Parties”) do hereby stipulate and agree in this Settlement Agreement as follows:

A. Background

1. On January 31, 2017, Rudolf and Carolyn A. Feimer filed Water Right Application S-88363.
2. On April 24, 2018, the Department issued a Proposed Final Order recommending denial of the application.
3. On June 4, 2018, the applicant filed a timely protest.
4. The Parties agree that the protest is resolved solely on the terms set forth in this Agreement.

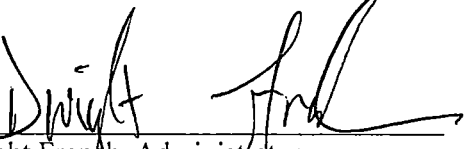
B. Consent

1. Each Party to this Agreement certifies that it has read the entire Settlement Agreement, including the draft Final Order Incorporating Settlement Agreement, and understands and agrees with the contents thereof.
2. Each Party to this Agreement understands and agrees that this Agreement and all documents incorporated by reference set forth the entire agreement of the parties.
3. Each Party to this Agreement understands and agrees that this Agreement and the Final Order Incorporating Settlement Agreement issued pursuant to this Agreement constitute the complete and final resolution of the protest.
4. Effective upon the signing of this Agreement by the Parties, Rudolf and Carolyn A. Feimer waives any and all right to petition for judicial review of this Agreement, and waives any and all right to request reconsideration, petition for judicial review, or appeal the Final Order Incorporating Settlement Agreement.

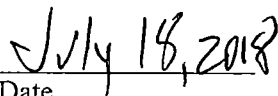
C. Terms of the Agreement

1. Once each Party has signed this Agreement, the Department will issue a Final Order Incorporating Settlement Agreement consistent with the attached draft Final Order Incorporating Settlement Agreement.
2. Each Party to this Agreement represents, warrants, and agrees that the person who executes this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Agreement.
3. Each Party to this Agreement certifies that it has had a reasonable opportunity to review and request changes to the Agreement, and that it has signed this Agreement of its own free will and accord.

- 4. The Parties agree that nothing in this Agreement or the Final Order Incorporating Settlement Agreement establishes factual, legal, or policy precedent.
- 5. This Agreement may be signed in counterparts.



Dwight French, Administrator,
Water Right Services Division
for Thomas M. Byler, Director
Oregon Water Resources Department



Date

Rudolf Feimer, Applicant

Date

Carolyn A. Feimer, Applicant

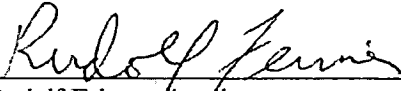
Date

7. The Parties agree that nothing in this Agreement or the Final Order incorporating Settlement Agreement establishes factual, legal, or policy precedent.

5. This Agreement may be signed in counterparts.

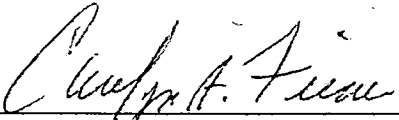
Dwight French, Administrator,
Water Right Services Division
for Thomas M. Byler, Director
Oregon Water Resources Department

Date



Rudolf Feimer, Applicant

7/17/18
Date



Carolyn A. Feimer, Applicant

7/12/18
Date